

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

REFAEL KLEIN,

Plaintiff,

Civil Action No.: 19-CV-9172

-against-

**DECLARATION OF
WILLIAM B. KERR**

STACEY R. B. AICHER,

Defendant.

William B. Kerr, pursuant to 28 U.S.C. ¶ 1746, declares under penalty of perjury that the foregoing is true and correct:

1. I am an attorney admitted before this Court and am the Managing Partner of Kerr LLP, attorneys for Plaintiff Refael Klein (“Plaintiff”). As such, I am fully familiar with the facts of this matter. I submit this Declaration in opposition to Defendant Stacey R. B. Aicher’s (“Defendant”) motion for contempt, to compel payment and/or for further sanctions against him.

2. Accompanying this Declaration is the Declaration of Refael Klein setting forth why an order for contempt, to compel payment and/or to award a judgment would be inequitable in that Plaintiff lacks the financial ability to pay the \$74,160 sanction award.

3. Defendant also seeks to supplement the sanctions award with an additional \$11,232.79 in attorneys’ fees and expenses incurred by Defendant to secure Plaintiff’s voluntary compliance with his prior sanctions obligations and otherwise respond to various submissions made by or on behalf of plaintiff Klein.

4. Notwithstanding Plaintiff’s good faith reason for nonpayment, Defendant’s request for an additional \$11,232.79 is excessive. In fairness, should the Court determine that additional sanctions are warranted, Plaintiff should only be permitted to recoup the cost of this motion which

to date, Defendant claims is (3.1 hours at \$340/hour or) \$1,116. Any fees or costs expended prior to the Court's order setting a final deadline for payment should not be included (absent, as Defendant has offered, the cost of the prior unbilled express mail for \$52.79).

For the reasons set forth herein and in accompanying Declaration of Refael Klein, Defendant's motion for contempt, to compel payment and/or for further sanctions should be denied.

Dated: November 4, 2020



William B. Kerr